

APRIL 21. 1722.

I Do Appoint JOHN DARBY and DANIEL
MIDWINTER to Print the TRIAL of
Arundel Coke Esq; and John Woodburne; and
Order that no other Person do presume to Print
the same.

P. King.

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THE
TRYAL
AND
CONDEMNATION
OF
Arundel Coke alias Cooke Esq;
AND OF
John Woodburne Labourer,
FOR
FELONY,
In Slitting the NOSE of
EDWARD CRISP Gent.

Contrary to the 22 & 23 Car. II. cap. 1. intitled, *An Act to prevent malicious Maiming and Wounding;*

Who were found Guilty at the Assizes held before the Right Honourable Sir PETE R KING Knt. Lord Chief Justice of his Majesty's Court of Common Pleas, at Bury St. Edmonds, Tuesday the 13th of March 1721. and received Sentence the Day following.

London:

Printed for JOHN DARBY in Bartholomew-Close, and
DANIEL MIDWINTER in St. Paul's Church-yard.
M.DCC.XXII.



EDWARD CRISPAGE
In Charge of the N.O.E. at
YONKERS, N.Y.
FEB 11 1911

THE
 TRYAL
 OF
JOHN WOODBURN,

A N D

Arundel Coke alias Cooke Esq;

ON Tuesday the 13th of March 1721, at the Assizes held at Bury St. Edmonds in the County of Suffolk, John Woodburne and Arundel Coke were arraigned upon an Indictment found by the Grand-Jury: And the Court proceeded thus.

Clerk of the S John Woodburne, hold up thy Hand. *Which they*
Arraigns. *Arundel Coke, alias Cooke, hold up thy Hand.* severally did.

You stand Indicted by the Names of John Woodburne, late of the Borough of Bury St. Edmond's in the County of Suffolk, Labourer; and Arundel Coke, alias Cooke, of the Borough aforesaid, Esq; for that you, after the twenty fourth day of June, in the Year of our Lord One thousand six hundred and seventy one, *viz.* the first day of January, in the Eighth Year of our Sovereign Lord George, of Great-Britain, &c. intending one Edward Crispe Gent. then and yet being a Subject of our said Sovereign Lord the King, to maim and disfigure at the Borough aforesaid, in the County aforesaid, by Force and Arms, &c. in and upon the said Edward Crispe, in the Peace of God, and of our said Sovereign Lord the King, then and there being, on

Purpose, and of Malice forethought, and by Lying in wait, did unlawfully and feloniously make an Assault. And that you the said *John Woodburne* with a certain Bill value a Penny, which you the said *John* then had and held in your right Hand, the Nose of the said *Edward Crispe*, on Purpose, and of your Malice forethought, and by Lying in wait, did then and there unlawfully and feloniously slit, with an Intent by so doing, the said *Edward Crispe* to maim and disfigure. And that you the said *Arundel Coke*, at the time of the Felony aforesaid, by the said *John Woodburne* in manner aforesaid, unlawfully and feloniously done and committed, to wit, the said first day of *January*, in the eighth Year aforesaid, at the Borough aforesaid, in the County aforesaid, on Purpose, and of your Malice forethought, and by Lying in wait, unlawfully and feloniously was present, aiding and abetting the said *John Woodburne* the Felony aforesaid, in manner aforesaid, feloniously to commit and do. And so the Jury aforesaid, upon their Oaths say, That you the said *John Woodburne* and *Arundel Coke*, the said first day of *January*, in the eighth Year aforesaid, at the Borough aforesaid, in the County aforesaid, by Force and Arms, &c. on Purpose, and of your Malice forethought, and by Lying in wait, the Felony aforesaid, in manner aforesaid, did, and each of you did, commit, and do against the Peace of our Sovereign Lord the King, his Crown and Dignities, and also against the Form of the Statute in that Case made and provided. [Vid. *A true Copy of the Indictment it self in Latin, at the end.*]

Clerk of the Arraigns. How say'st thou, *John Woodburne*; art thou guilty of the Felony whereof thou standst Indicted, or not Guilty?

Prisoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be tryed?

Prisoner. By God and my Country.

Cl. Arr. God send thee a good Deliverance. How say'st thou, *Arundel Coke*, alias *Cooke*, art thou guilty of the Felony whereof thou standst Indicted, or not Guilty?

Prisoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be try'd?

Prisoner. By God and my Country.

Cl. Arr. God send thee a good Deliverance. You, *John Woodburne* and *Arundel Coke* alias *Cooke*, the Prisoners at the Bar, hearken to what is said to you. Those good Men that are now called and do here appear, are those that are to pass between our Sovereign Lord the King and you, upon your several Lives or Deaths; if therefore you or either of you will challenge them or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn, and you shall be heard.

Cl. Arr. Cryer, give the Book to

Thomas Buckingham,
Nicholas Alger,
Ambrose Gallant,
George Goddard,
Robert Gall,
William Scott,

George Cross,
Samuel Bridge,
Jonathan Clements,
Thomas Taylor,
Simon Reeve,
William May.

Cl. Arr.

Cl. Arr. Count these.

Cryer. Are you all sworn, Gentlemen ?

Jury. Yes.

Cl. Arr. Make a Proclamation.

Cryer. O Yes, If any of you can inform my Lord the King's Justice, the King's Attorney or Sollicitor General, of any Treason, Murder, Felony, or other Misdemeanour committed by the Prisoners at the Bar, or either of them, come forth, and you shall be heard ; for the Prisoners at the Bar now stand upon their Deliverance : and all Persons bound by Recognizance to prosecute them, or either of them, come forth and prosecute, or you'll forfeit your Recognizances.

Cl. Arr. *John Woodburne*, and *Arundel Coke* alias *Cooke*, hold up your Hands. Gentlemen of the Jury, look upon the Prisoners, and hearken to their Charge : They stand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds* in the County of *Suffolk* Labourer, and *Arundel Coke* alias *Cooke* of the Borough aforesaid Esq; for that they (as in the Indictment before-mention'd) upon which Indictment they have been arraign'd, and pleaded severally Not Guilty : Your Charge is to enquire whether they, or either of them, are Guilty of the Felony whereof they stand indicted, or Not Guilty.

Mr. Lee. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King against the Prisoners at the Bar, who are indicted for Felony on the 22^o and 23^o Car. II. entitled, *An Act to prevent malicious Maiming and Wounding*. And the Indictment sets forth, that the Prisoners, the first Day of *January*, in the eighth Year of his present Majesty, at *Bury St. Edmonds* in this County, did on Purpose, and of Malice forethought, and by Lying in wait, make an Assault unlawfully and feloniously upon *Edward Crispe* Gent. and that the Prisoner *John Woodburne* with a Bill which he then had in his Right Hand, did on Purpose, of Malice forethought, and by Lying in wait, slit the Nose of the said *Edward Crispe*, with an intent in so doing to disfigure the said *Edward Crispe* ; and that the Prisoner *Arundel Coke* at the time of committing the said Felony, on Purpose, and of his Malice forethought, and by Lying in wait, was unlawfully and feloniously present, aiding and abetting the said *John Woodburne* to commit the said Felony : All which is laid to be done contrary to the Form of the Statute. If we who are Counsel for the King prove this Matter, you will find them Guilty.

Serj. Selby. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel, *pro hac Vice*, for the King against the Prisoners at the Bar, who stand indicted upon the Statute of the 22^o of King *Charles II.* the one for maliciously maiming and disfiguring of *Edward Crispe*, the other for abetting that Fact, which by that Act is made one and the same Offence ; I said, Gentlemen, I was Counsel for the King, for that his Majesty, as the Father of his People, and for their Safety, out of his natural Goodness, hath been graciously pleased particularly to regard this Prosecution for so horrid and bloody an Assassination. And tho, Gentlemen, 'tis difficult to stand in this Place without the greatest Tenderness to our Fellow-Creatures, yet these, who have devested themselves of all Humanity, now cease to be such ; 'tis even Cruelty to the King's People not to stand up against them so far as is consistent with Law and Justice. Their Prosecution is become the common Concern

of Mankind; for so long as these Prisoners have a Being here, the Life of every Man is precarious, and but at the Will of so infernal a Contriver as the one, and so hellish an Executioner as the other. We shall first, Gentlemen, prove the Fact committed, and that by Mr. *Crispe* himself, who by a particular Providence hath survived this horrid Attempt, and is here to give Evidence of it, and that he was invited with his Wife by Mr. *Coke* (who married Mr. *Crispe*'s Sister, and who was to have Mr. *Crispe*'s Estate by his decease) to sup at his House; That Mr. *Coke* proposed to him to go after Supper to make a visit to Mrs. *Monke* (whole Name we mention without any the least Imputation) to which Mr. *Crispe* consented; That Mrs. *Monke*'s House opens into the Church-Yard, which is but cross the way from Mr. *Coke*'s House; That Mr. *Coke* took Mr. *Crispe* along with him about ten or eleven at Night, it being dark, into the Church-Yard, and walked him about near Mrs. *Monke*'s Door without going in, and then making some Noise or Whistling, a Person came up to him and knock'd him down, after which he was not sensible; That being left for dead, after some time he got up, and return'd, he did not know how, to Mr. *Coke*'s House, where the Company receiv'd him with great Consternation, as did Mr. *Coke* himself, who soon returned after walking out with Mr. *Crispe*, out of Breath, and called for a Glass of Wine; and being asked what was become of Mr. *Crispe*, said he was stumbling home in the dark. This we shall prove by Mr. *Browne* another Relation. We shall prove by Mr. *Sturgeon*, who was called as his Chyrurgeon, the Condition of his Wounds; and by *Carter*, a Blacksmith, that Mr. *Coke* about the Friday before the Fact committed, sent for him, and asked (after a previous Discourse of *Carter*'s Poverty, and how he might live well in the World) if he would cut off ten Mens Heads without remorse, which when *Carter* said he could not, If he would cut off one Man's Head, and lay it before *Coke*; which *Carter* refusing, Mr. *Coke* bid him consider on't, and come again, then gave him a Glass of Brandy, and dismissed him, bidding him send *Woodburne* to him. We shall prove by one *Moone* a Taylor, that Mr. *Coke* about three Years since follicited him to the like effect. We shall prove by *Willet* the Constable, that after *Woodburne* was taken up, he confessed the Fact, said he did it with a Hedging-Bill, and gave him Directions where to find it, and he found it accordingly, which *Woodburn*, when shew'd him, acknowledged to be the same, and which we have here to produce. We shall prove by Mr. *Wetherell* the Goaler, that Mr. *Coke* since he was in his Custody confessed the whole Fact, and that *Woodburne* was placed in a Porch of an empty House near Mr. *Coke*'s, to come out on a Whistle to do the Fact, and that he deliver'd Mr. *Crispe* to *Woodburne*, and was present when the Fact was committed. And after this Evidence, there can be no doubt, Gentlemen, but you will find the Prisoners at the Bar guilty of this Indictment.

Serj. *Branthwayt*. My Lord, the Defendants are indicted of Felony upon an Act of Parliament made 22° & 23° Car. II. by which Act, if any Person or Persons, on Purpose, and of Malice forethought, and by Lying in wait, shall unlawfully cut out or disable the Tongue, put out an Eye, slit the Nose, &c. with an Intention in so doing to maim or disfigure; the Person or Persons so offending, their Counselors, Aiders, and Abettors, knowing thereof, are Felons without Benefit of

of Clergy. The Indictment charges the Defendants with feloniously making an Assault on Mr. *Crispe*; that *Woodburne* slit his Nose with a Bill or Hook; that *Coke* was aiding and assisting therein. We shall be able by undoubted Evidence to prove and make clear the Charge of the Indictment, and every Particular thereof, as has been opened to you, and that the manner of doing it was attended with such Circumstances of Inhumanity, Baseness, and Villany, as no Instance can parallel. Mr. *Crispe* is Brother-in-Law to Mr. *Coke*, who on the first day of January last, under the Colour of Friendship and Affection, invites Mr. *Crispe* and Family to Supper at *Coke's* House. Before this Invitation he had agreed with *Woodburne* for Hire to lie in wait on purpose to effect the designed Mischief. When *Woodburne* was lying in wait, *Coke* came several times to him to encourage him in his vile Purpose. After Supper, Mr. *Coke*, unmindful of all the Obligations of brotherly Love, of Hospitality, and of the Protection due to Mr. *Crispe*, by false and vile Arts and Persuasions entices him into the Church-Yard, the Place designed and agreed upon for the Execution of their wicked Purposes. When he had got Mr. *Crispe* into this Place, by Sign he gave notice of it to *Woodburne*, who had follow'd at some distance; and then deliver'd him into the Possession of *Woodburne*, and was present at the striking several Blows with the Hook. By the Nature of the Instrument every Blow must maim and disfigure; and the Blows being given by the Order and Direction of Mr. *Coke* by *Woodburne*, Mr. *Crispe's* Nose was slit on purpose to maim and disfigure by one lying in wait: which are all the Circumstances required by the Act of Parliament to make them guilty of the Felony with which they are charged. Which several Facts we shall call our Witnesses to make out, and doubt not but the Jury will find him guilty.

Serj. *Selby*. We desire in the first Place, Mr. *Edward Crispe* himself may be sworn, (which was done accordingly.) Mr. *Crispe*, give an account to my Lord and the Jury of the whole Matter.

Crispe. On New-Years-Day last I was invited to sup at Mr. *Coke's*, and being there, he propos'd to me to go to Mrs. *Fanny Monke's*.

L. C. J. Was this before or after Supper?

Crispe. This was before Supper: We supp'd about seven, and after Supper about ten a-clock he call'd me out of his Parlour, I follow'd him; we went into the Church-yard. It was then very dark, the Moon did not shine. He took three or four Turns before the House where Mrs. *Monke* dwelt, then he stood still and made a noise.

L. C. J. What kind of Noise did he make?

Crispe. It was like a Hollowing.

L. C. J. Were you under any Fear or Apprehension from that Noise?

Crispe. Yes, my Lord, I was afraid, and made up towards the Wall; but in a quarter of a Minute somebody came behind me, and knock'd me down.

L. C. J. Did you then know who that Man was?

Crispe. I did not.

L. C. J. Can you tell what was done to you afterwards?

Crispe. My Lord, I cannot, for on that Blow I lost my Senses for some time.

L. C. J. How long was it before your Senses returned?
Crispe. My Lord, I cannot tell, but in some time I got up, and return'd to Mr. Coke's.

Serj. Selby. In what Condition did you find your self?
Crispe. I was ready to die and faint, and I was found very much wounded.

Serj. Branthw. Did any Chyrurgeon come to you at Mr. Coke's?
Crispe. Yes, Sir, Mr. Sturgeon.

L. C. J. After the Person came up who knock'd you down, did you hear Mr. Coke say any thing?

Crispe. No, my Lord.

L. C. J. Can you tell whether he stay'd any time, or what became of him?

Crispe. No, I cannot.

L. C. J. Was he there when the first Blow was given?

Crispe. Yes, he was.

L. C. J. Will the Prisoners ask Mr. Crispe any Questions?

Coke. Mr. Crispe, was I present when you were knock'd down?

Crispe. Yes, Sir.

Coke. Do you remember that you saw me?

Crispe. Yes.

Coke. How near was I to you?

Crispe. You were close by me when I was knock'd down.

Serj. Selby. Call Mr. Brown and swear him, (which was accordingly done.) I think you are a Relation of Mr. Coke's?

Brown. Yes, Sir, I married his own Sister, and he married Mr. Crispe's Sister.

Serj. Selby. Was you at Mr. Coke's House last New-Years-Day at night?

Brown. A Day or two before last New-Years-Day, I and my Wife and Daughter were invited to sup with him, and accordingly we went. I came about six a-clock, and found Mr. Coke and Mr. Crispe drinking a Glass of Wine in the Parlour before Supper.

Serj. Selby. Was there any other Company with them?

Brown. No, the Women were above Stairs. I sat down with them, and we three staid in the Parlour till Supper-time. When Supper was ready, we went up Stairs. Then after Supper between eight and nine, we three came down into the Parlour again. Some time after, Coke went out of the Room, and then came back again and gave a Call, or beckon'd to Mr. Crispe, who follow'd him out of the Room.

Serj. Selby. At what time of night was this?

Brown. After nine a-clock at night.

Serj. Branthw. How long was it before Mr. Coke return'd?

Brown. He was gone about ten Minutes, and then returned.

Serj. Branthw. Was he in any disorder when he returned?

Brown. He seem'd to be out of breath, as if he had been walking faster than ordinary.

Serj. Branthw. How far distant is the Church-Yard, where this Gentlewoman dwelt, from Mr. Coke's House?

Brown. The Church-Yard is about twice the length of this Shire-House from Mr. *Coke's* House.

Serj. Branthw. What did *Coke* do when he came in?

Brown. Immediately he drunk a Glass of Wine to me, and after he had sat some time, he went out of the Room. I heard a Noise up Stairs, and being told my Daughter was ill, I went up, and in a little time came down again into the Parlour, where I found Mr. *Coke*.

Serj. Branthw. Did you ask him what was become of Mr. *Crispe*?

Brown. I did then ask him what was become of Mr. *Crispe*, and he told me that he believ'd he was gone home in the dark. In about two or three Minutes after, Mr. *Crispe* came in. He was very much wounded and bloody. I was so surprized that I could not take particular notice of him.

Mr. Raby. How long was it from *Crispe's* going out to his coming in again?

Brown. It was near half an hour.

L. C. J. So then *Coke* returned in about ten Minutes, and *Crispe* in near half an Hour.

Browne. Yes, my Lord.

Serj. Selby. Did Mr. *Coke* see Mr. *Crispe* when he came back to his House?

Brown. Yes.

Serj. Selby. What did he say?

Brown. He seem'd to be in a great Consternation.

Mr. Raby. Do you know of any Estate that would have come to Mr. *Coke* after Mr. *Crispe's* Death?

Brown. I cannot positively say it of my own Knowledge.

Mr. Raby. We will ask Mr. *Crispe* that Question. Pray, Mr. *Crispe*; would any Estate have come by your Death to Mr. *Coke*?

Crispe. In case I had died, One hundred Pounds *per annum* would have come to his Wife as one of my Sisters.

L. C. J. Have you then no Children, nor Brothers?

Crispe. No, my Lord; my next of Kin are three Sisters, one of which is Mr. *Coke's* Wife, she would have been one of my Heirs.

Serj. Selby. Call Mr. *Sturgeon*; (*who appeared, and was sworn.*) What do you know concerning this wounding of Mr. *Crispe*?

Sturg. I am a Chirurgeon by Profession; and the first day of *January* last at Night, about Eleven a-clock, I was sent for to Mr. *Crispe* at Mr. *Coke's* House: When I came, I found him very much wounded and cut, and in a very weak Condition, and that he had lost a great deal of Blood. I examined his Wounds: One Wound began at his right Ear, divided the fleshy part of his Cheek, and ended on his upper Lip just under his right Nostril; the Flesh was all divided, and the Jaw left naked. Another Wound divided the right side of the Nostril, and made an oblique Crofs over the Wound, and ended near the right under Jaw.

Serj. Selby. Was his Nose slit?

Sturg. Yes, Sir, the Nose was cut from without into the Nostril; the Edge of the Nose was not cut through, but there was a Cut or Slit in the Nose that went through: I sow'd it up: it was indeed but

but with one Stitch; it is yet visible, and the Nose was cut through.

Serj. *Selby*. Were there any other Wounds?

Sturg. There was another deep Wound under his Chin, that reach'd from one Jaw to the other. There was another Wound, which began at his Chin, cross'd the left under Jaw, and tended towards his Ear. There was also a small Wound on his left Cheek, another on his upper Lip, and another on his left Temple.

Serj. *Selby*. How many Wounds had he in all?

Sturg. Seven.

Serj. *Selby*. Do you think there were seven distinct Wounds, that had seven distinct Blows?

Sturg. I take it, that every one of the seven Wounds had a distinct Blow.

Serj. *Selby*. With what Instrument did you apprehend those Blows were given?

Sturg. It was cut so clean, that I thought it was done either by a Knife or Razor.

L. C. J. Let the Jury see Mr. *Crispe*'s Wounds.

[*Then his Face and Wounds were shewn to the Jury for their Observation.*]

Serj. *Branthw.* Swear *Charles Willett*; (which was done accordingly.) I think you are a Constable in *Bury St. Edmonds*?

Willet. I am.

Serj. *Branthw.* Had you any occasion to speak to *Woodburne* concerning this Matter, and what did he say?

Will. I had a Warrant from Alderman *Wright* and Mr. Serjeant *Reynolds* to apprehend *Coke* upon *Woodburne*'s Examination.

Serj. *Branthw.* The Question ask'd you is, What you know of *Woodburne*'s Confession, and what he hath said to you about this Matter?

Will. After *Woodburne* was committed, I was with him, and ask'd him, Whether he was concerned in the wounding of Mr. *Crispe*? He told me, Yes he was. I ask'd him, Whether Mr. *Coke* was with him: he said he was. I ask'd him how long *Coke* stay'd with him: He said, That he had struck *Crispe* three or four Blows before *Coke* left him.

Serj. *Branthw.* What else did you ask him, or did he say to you?

Will. He told me, that he was walking up and down in the Church-yard when *Coke* whistled to him, and that on that Signal he went up and assaulted Mr. *Crispe*.

Serj. *Branthw.* Did he give you any account how long and where he waited before the Fact was done?

Will. He told me, that he was desired by Mr. *Coke* to be up and down in the Churchyard about Nine a-clock that Night; and that being a cold Night, *Coke* gave him a Bottle of Brandy, and told him he could not tell what time *Crispe* would come home, but desired him to be ready and to stay let it be never so long.

Serj.

Serj. Branthw. Did he tell you with what Instrument he did it?

Will. He told me, He did it with an Hook or Bill, that was new ground for the Purpose, and that it was in his House at the right hand of his Door. I went according to his Direction, and found it, and brought it to him; and he said, That that was the Hook.— The Hook I have brought with me, and this is the Hook that I have now in my Hand.

Mr. Raby. Call *William Wetherel*; (*who was sworn.*) Give my Lord and the Jury an account what you know of this Matter.

Weth. I am the Gaoler; and the Day after Mr. Coke was committed to me, about five Minutes after One, he sent for me up into his Chamber, where his Wife was crying and in great disorder, as he seem'd to be likewise. She was desiring her Husband to discover. When he came to himself, he told me, That he and *Woodburne* had had a Design to murder Mr. *Crispe*, and had attempted it several times; and desired me to go and secure *Woodburne*. I went to the Alderman, and told him of it, and he gave me the like Orders. Coming from the Alderman I met Mr. Coke's Man, who ask'd me whether I had found him; on which I ask'd him, Who, and what he meant, thinking him to be ignorant of his Master's Confession: but he told me, that his Master had discovered it to him, and had sent him to take up *Woodburne*. Whilst we were talking, we saw *Woodburne* coming up, and we desir'd one *John Carter* a Smith, who was shooing a Horse, to assist us; which he did, and we secur'd *Woodburne*.

L. C. J. Did Mr. Coke confess any thing to you concerning this Fact, and the manner of doing it?

Weth. Yes, my Lord, he did. He told me several times, that he had a design to murder *Crispe*, and that he employ'd *Woodburne*, and delivered *Crispe* into his hands.

L. C. J. Did he tell you that?

Weth. He did tell me so: He told me also, That it was done with an Hook; and that he had bid *Woodburne* to cut his Weasand or Wind-pipe; and that if *Woodburne* had not been a cow-hearted Dog, he would have so done, and secur'd *Crispe* from telling Tales.

Mr. Raby. Did Coke tell you what Means he used to do this to Mr. *Crispe*?

Weth. He said, That he call'd him out of his House, went into the Church-yard with him, and there delivered him into *Woodburne*'s hands.

Raby. Did he say what Signal was given?

Weth. Not that I remember; but he said, That *Woodburne* was placed there by his Appointment.

Mr. Raby. For what Design?

Weth. With an intent to murder him. When *Woodburne* struck him, Coke said, he went away immediately.

Mr. Raby. What have you heard *Woodburne* say concerning this Fact?

Weth. I have heard *Woodburne* say, That he and Coke had lain in wait several times and at several places to murder Mr. *Crispe*.

Mr. Raby. Did *Woodburne* give you any account what he did at this time to Mr. *Crispe* ?

Weth. Yes, he did ; he said, That he struck him a Blow with his Hook, and that not quite striking him down, he gave him a second Blow which did ; and that *Crispe*, as he was falling, (who was never us'd to swear) cried out, God damn him ; and that then it went to his very Heart to think that he should kill a Man with an Oath in his Mouth.

Mr. Raby. Did he say he gave him many Blows ?

Weth. He said, He gave him several Blows, and that he thought he was dead.

Mr. Lee. Call *Robert Moon* ; (who appeared, and was sworn.) What do you know of this Matter ?

Moon. When I heard what happen'd to *Crispe*, I said, I knew the Person who did it, or the Person who employ'd him to do it ; and the reason was, because three Years, or three Years and a half ago, Mr. *Coke* sent for me, and said to me, at first I thought it to be in a jesting way, that he wish'd Mr. *Crispe* out of the World, he was a good-for-nothing Fellow, his Wife had a trick of playing away his Estate, and he wish'd some body would knock him in the Head. Sir, said I to him, what advantage would that be to you ? He shook his Head, and said, A very good Estate. Said I, I thought *Crispe* had but a small Estate. Yes, said he, a very good one. Then I began to think there was something in it. After some little time, said he, I do not value ten or twenty Guineas to knock him in the head. Then I began a little to reflect that he should have such an opinion of me, that I should be such a sort of Person.

Mr. Lee. What then did you say to him ?

Moon. I told him, That I would not kill the greatest Villain in the world for ten such Towns as *Bury*.

Mr. Lee. What did he say afterwards ?

Moon. I do not remember, I have forgot if there was any thing else.

Mr. Lee. How came you to remember this ?

Moon. When I heard of this Fact committed on Mr. *Crispe*, then it came fresh into my Memory.

Serj. *Selby*. Call *John Carter*, (who appeared, and was sworn.) What Trade are you of ?

Carter. A Blacksmith.

Serj. *Selby*. Did *Coke* at any time send *Woodburne* for you, and what past thereon ?

Carter. On the Friday before *New-Years-Day* last, which was on a Monday, Mr. *Coke* sent *Woodburne* to me, who told me his Master *Coke* wanted to speak with me.

Serj. *Selby*. Did you go ?

Carter. Yes, I went to his House, and he order'd me to come up to him in his Chamber. When I came up, he told me that he wanted a good strong Horse to carry his Weight. I told him I did not know of any

any one then ; but when I did, I would let him know. Upon that he said, By God, how do you go on, Boy ? I hear you have lost most of your Busineſs, you have got no Iron nor Coals, and you are afraid of a Goal ; I have a thing now in agitation that will make a Man of you as long as you live. I said I should be very glad of that. Said he, Can you keep a Secret ? Yes, said I, as well as any one to serve my ſelf and my Friend. Said he, Can you keep one of the biggest Secrets in the World ? I told him, As well as any body. Said he, You are pretty much in Debt, and if you will serve me in this, I can make a Man of you as long as you live : do you think you could cut five or ſix Mens Heads off without Scruple of Conscience ? I told him, No ; it was too much for a Man's Conscience to bear. Said he, What, a Scruple of Conscience to do ſuch a thing as that ? There are thoſe above who have done ten times worse. I ſuppoſe, Sir, said I, you mean the *South-Sea Gentlemen*. Yes, ſaid he, ſo I do ; they have ruined Families, and begger'd Gentlemen : To cut Mens Heads off is but a Trifle to them. Said I, Mr. *Coke*, I believe you ſpeak only in joke, by way of merriment. Said he, What, do you think I ſent for you by way of joke ? I told him, I could not do any ſuch thing. Then, ſaid he, do you think you can cut off one Man's Head without Scruple of Conscience ? I told him, No. Then, ſaid he, If you can't cut off a Man's Head, and lay it down upon the Table before me, you are not for my turn : On that he fetch'd a Bottel of Brandy, and gave me a Glafs or two, and then ſaid to me, *Carter*, I would have you go home, and conſider of it for two or three Days, and if you can cut off a Man's Head without Scruple of Conscience, you ſhall have plenty of Gold and Silver, and any thing else you ask. I told him, I needed no Conſideration, for I could not do it. Then, ſaid he, ſend *Woodburne* to me. And as I went out, I ſaw *Woodburne* at the Door, and ſent him in to Mr. *Coke*.

Serj. *Selby*. Did he ſay any thing else to you, or any thing about Mr. *Crispe* ?

Carter. I live in a House of Mr. *Crispe*'s, and Mr. *Coke* had been formerly his ſteward, and *Woodburne* acted under him. And Mr. *Coke* ſaid, that he heard my House was out of repair, that it would be his after Mr. *Crispe*, and whether I ſhould not like it better for him to keep it in repair, as he had done before.

Serj. *Selby*. I think, my Lord, we have done with our Evidence, and have ſufficiently proved Mr. *Coke* and *Woodburne* to be guilty not only within the Intention but the Letter of the Statute of the 22d of *Car. II.* upon which they ſtand indicted. We have proved the Malice premeditated and forethought, the Intention to maim and disfigure by ſlitting the Nose (for Mens Intentions muſt be conſtrued by their Actions) and the maiming and disfiguring accordingly ; and that Mr. *Coke* was privy to, and the Aider and Abettor of the Offence : And therefore, Gentlemen of the Jury, we can't doubt but that you will find them both Guilty ; and that your Verdict and their Conviction will be with the Suffrage of all Mankind.

Mr. Raby. My Lord, having gone thro our Evidence, you will now permit me to make some few Observations upon what has been offer'd, and from which we humbly apprehend it will most clearly appear, that we have fully prov'd and made out every thing necessary to maintain this Indictment.

My Lord, It must be agreed, that this is an Offence created by a particular Act of Parliament, usually call'd Sir John Coventry's Act, made on the Occasion of the like barbarous Usage he met with, to punish that Offence, and to prevent the like for the future: And I also agree, that the Prisoners must appear to be guilty of those very Facts, which by that Act are made Felony, or otherwise they cannot be punished by that Law. But we humbly apprehend, that when that Law, and the Evidence which has been given against the Prisoners are consider'd, they will appear to be guilty within the express Words of that Law; for which End I beg leave to mention that Act, which is the 22 & 23 Car. II. cap. 1. The Words are these. "That if any Person or Persons, on Purpose, and of Malice forethought, and by Lying in wait, shall unlawfully cut or disfigure the Tongue, put out an Eye, slit the Nose, &c. with an Intention in so doing to maim or disfigure, in any the Manners before mentioned, the Person or Persons so offending, their Counsellors, Aiders, and Abettors (knowing of and privy to the Offence aforesaid) shall be Felons, &c."

From this Clause it appears the Offence must be done;

1. Of Malice forethought.
2. By Lying in wait.
3. By Slitting the Nose, &c.
4. With an Intention to Maim or Disfigure.

And we humbly submit it, that from the Evidence which has been given against the Prisoners, it most plainly appears, that the Defendants are guilty of this Offence in every Circumstance described by this Act of Parliament.

For certainly there cannot be the least Question, but that this was done of Malice forethought, when it appears from the Evidence to have been under Consideration and premeditated for three Years and an half: And Mr. Coke had try'd several Persons, before he could find any so hardy as to execute his base Purpose, or comply with so inhumane an Attempt: and therefore we apprehend there cannot be any colour to say, This was not of Malice forethought.

2. And that this Offence was also done with Lying in wait, is as clear: For does it not fully appear upon the Evidence of Mr. Crisp, that when he came out of Mr. Coke's House, Mr. Coke gave a Whistle or Signal? In vain had Mr. Coke given that Signal, if no Person had been in waiting to have heard it: To what End had that Signal been given, if Mr. Coke had not known there was some Person to have heard it? It appears plainly Woodburne came upon the Signal given; and what ensued you have heard, I need not repeat.

3. The third thing made material by this Act, is, *That the Nose should be slit*; and that the Nose was slit appears from the Surgeon's Evidence, who has given a very particular Account of the Seven Wounds Mr. *Crispe* received in his Face and Head: and he says, The Nose (the Nostril) was cut through.

4. Whether the other Circumstance, that this was done with an Intent to Maim and Disfigure, does sufficiently appear, or not, is the only Question that remains: and we submit it to your Consideration, as that which is very clear from this Evidence.

Mens Acts are the best Interpreters of their Intents: If a Man kills another without Provocation, tho no express Malice or malicious Intent appears, yet the very Act of the Party has always been taken to be a sufficient Proof of his Intent and Malice forethought. The Intent is latent in the Mind, and can seldom be known otherwise than by the Act which is done: and as there the malicious Intent is collected from the Act of the Party, so here 'tis as reasonable to collect his Intent to disfigure from the Act which is done, the maiming and disfiguring Mr. *Crispe*; and the very manner of doing it speaks it.

Whoever looks upon this Gentleman (Mr. *Crispe*) sees too plainly how much he is disfigur'd: and could a Man cut another seven times on the Head and Face with this Iron Bill, with this Weapon, without disfiguring him? Is it to be imagin'd? And when he has done the very Act, when he has disfigur'd him, shall he say, He had no such Intent? The Act done, and the manner of doing it, speak it too plainly. 'Tis confess'd the Intent was to murder; this is what both the Prisoners admit to be the End design'd; but did they not also intend the Means? It would be in vain to intend the End, and reject the Means to effect it: the Means chosen to effect it have appear'd to be to cut him to Death, by striking him with a Bill on the Head and Face: Is it possible to expect to cut him to Death on the Face with the Weapon produced, and not to disfigure him? This is the Act *Woodburne* has done, and *Coke* was present when *Woodburne* struck, even when he did this Fact, and *Coke* was a Counsellor, Aider and Abettor; he was present, and, in the Words of the Act of Parliament, knowing of the Offence. And therefore upon this Evidence we submit it, whether we have not given Satisfaction to the Court and Jury, that the Prisoners are guilty.

This is not a Prosecution of the Party injured, arising from Revenge or Resentment, but is carried on by the Publick, by the Crown, for the sake only of Publick Justice, that by the Punishment of this Offence, the Subjects may have that Protection they ought to have by a due Execution of the Laws: And all we pray, is, That the Jury will give such a Verdict as is agreeable to Justice.

L. C. J. Woodburne, What have you to say for your self?

Woodburne. May it please your Honour, my Lord, the first time that *Coke* began with me about this Matter was on a Wednesday in last Barley-Harvest. He sent for me to mend his Copper, and after I had

done it, he bid me go to the further end of the *Mill-Lane*, and there he must speak with me, and which came first should stay for the other. I was there before him; when he came, he was on horseback, and his Horse kicked about in a furious manner, that the People took notice of it. When they were gone, he told me that he had a thing for me to do, but not to be done presently, and that if I did it I should want for nothing. I ask'd him what it was. He said, about Mr. *Crispe*, to set him aside, that is, to kill him; but he said, it was not to be done presently: so he put his Hand in his Pocket and gave me Eighteen Pence. I told him, I never did such a thing in my Life; I could not do it. Said he, It is not to be done presently, we have time to consider. A while after he sent for me again, and ask'd me, Whether I had considered of it. I told him, I could not do it. Said he, We must set *Crispe* aside; for Mrs. *Crispe* hath got a trick to play; she will make away what there is from me and my Child. I said, I never did any such thing; I could not do it, and desired him to forbear. I went away and left him in his Chamber. Within a while after he came to my House; said he, *John*, what is the reason you can't do this for me? Said I, I cannot do it. Said he, What signifies it, I would do it for you. I said, I could not do it. Then he went away very uneasy, and in a Week or Fortnight sent for me again to his Chamber, and there was at me again. I told him, I could do no such Work. Said he, Why can't you do this Work? I have been a good Master for you, I made my self look little to bail you when you were in Gaol. I turned about and cried. Said he, What makes you cry? your Crying signifies nothing; the Money that I shall give you, will do you and your Family a kindness. Said I, I can do no such thing. Said he, It signifies no more the killing of him, than to kill a Dog, for they do no good with what they have. Yes, said I, Mr. *Crispe* is a very good Master; I work'd for him and his Father before him: and so I went away. Afterwards my Wife died three days before *Gunpowder-Treason* last: she was buried on that day, and being very poor, I sent my Daughter to desire a little Money of him to have the Bell toll'd for my Wife; but he sent me none. My Wife was buried on a *Sunday*, then on the *Monday* he sent his Boy for me; I went down to him, and when I came, I fell a weeping for the loss of my Wife, and having ten Children. Said he, What makes you cry? you must pull up a good Heart; tho your Wife be dead, you may have Friends; here is that which will do you a kindness hereafter. Said I, I am very sorry for the loss of my Wife. Said he, What signifies that? she was carried well into the Church, and is, no doubt, happy; she is gone before you; we must all go in our time: I was a Friend to you in her Illness; I sent her a good Doctor at my own Charge: this twenty Pounds that I will give you will be a brave Estate for you.

L. C. J. What were you to have this twenty Pounds for?

Woodburne.

Woodburne. It was to kill Mr. *Crispe*; he told me, that I must set aside Mr. *Crispe*; he offer'd me Twenty Pounds to do it; but I then refus'd it. On Monday, New-years-day, in the Morning, *Coke* sent his Boy for me to come to him; and between Eight and Nine, in the Morning, I went to him. He was in his green Room. Now, said he, *John*; we shall have the fairest Opportunity to kill Mr. *Crispe*. I told him, I was loth to do it; it was very cold, and I had an Ague. Said he, I will give you that, which shall warm you; he went to his Closet, and gave me out of the Bottle, that he used to carry in his Pocket, half a Pint of Brandy, and told me, that happen how it will, I must not come near his House any more that Day, lest afterwards there should be some Suspicion; but said he, Whether Ague or not, you must be at Mr. *Morrice's* Porch, which is in the Church-yard, about Eight a-clock in the Evening. I went there between Eight and Nine; about Nine, *Coke* came out, and gave me a Whistle; on that I went up to him; he told me, Mr. *Crispe* was very jolly, and he believ'd, it would be late before he came out. I told him, I did not care to stay. Said he, You must stay now; this is the Time that will do it. I staid 'till Ten-a-clock; then he came to me again in Mr. *Morrice's* Porch, and told me, That he believed *Crispe* would not go 'till Eleven-a-clock; but the later the better. Then he went from me again, and a little after Ten, *Coke* and *Crispe* came out together, and on *Coke's* whistling I came up to them; *Crispe* was then before, and coming to get against the Wall. I came up to *Coke*; he bid me have a care not to hit him instead of *Crispe*, being very dark; so he took me by the Sleeve to lead me up to *Crispe*, and said to *Crispe*, Brother, stand still; on that I hit him two Stroaks with my Hook; tho' I never heard him swear before, yet he now swore, God damn him; on that, *Coke* said, What! Doth he swear? Secure him, down with him; he stood by him 'till I gave him several Blows, and then he went away. *Coke* desired me to take away his Watch; for, saith he, As to his Money, he don't carry above Half a Crown or Three Shillings in his Pocket; and when I go to London, I will sell the Watch for you.

Lord C. J. What *Woodburne* saith against *Coke* is no Evidence against *Coke*, and should not have been mention'd by him; but what he saith relating to himself before the Fact, is so twisted with *Coke*, that without the Whole it is not so intelligible as to himself. However, the Jury are to take notice, that what *Woodburne* saith, is only Evidence against himself, and not against *Coke*.

Lord C. J. After you had given him those several Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done, and went away forthwith to my own House, where I was about to take a Line to hang myself.

Lord C. J. Have you any Witnesses, or any body to speak for you?

Woodburne. My Lord, here are my two Daughters in the Court; I desire your Lordship would be pleas'd to hear them, *Ann Woodburne* and *Sarah Woodburne*; who being call'd, appear'd, and were sworn.

Lord C. J. What say you, *Ann Woodburne*?

Ann Woodburne. On the Wednesday before New-years-day, *Coke* sent for my Father by his Boy; I told the Boy, my Father was in Bed, and sick of an Ague and could not come. The Boy came again, and said, my Father must by all means come; but he would not then go, but he went to him on New-years-day in the Morning, and came home again. About Five or Six-a-clock in the Evening, my Father went out with a Hook in his Hand; and he said, he should not be at Home till Eleven or Twelve at Night; and if any body came for him, he bid us not take any notice but that he was at Home. We thought he took the Hook to cut some Wood with.

Lord C. J. Have you any thing more to say?

Ann Woodburne. When my Mother died, I went to Mr. *Coke's* to borrow Five Shillings of him, to have the great Bell toll for my Mother; and told him, that my Father would pay him again. He said, What signifi'd the ringing out of the great Bell; her Soul would be never the better for it; but, if he'll satisfy me in my Request, he shall have Five times Five Shillings.

Lord C. J. What say you, *Sarah Woodburne*?

Sarah Woodburne. *Coke* did frequently send for my Father, at all times both of Day and Night; and he would often come to my Father, and when he came, they would go out, and walk down the Backside, and talk together. After this Fact was done, *Coke* sent his Boy for my Father, and the Boy said, They must not go together, for if they did, People would take notice of them.

Lord C. J. *Woodburne*, have you any thing more to say?

Woodburne. This Day Nine Weeks, which was a Week after the Fact committed, *Coke* sent for me, and said, *John*, I wish you would have done the thing I order'd you; but you have been before Alderman *Wright* and the Recorder, and have told your Story well; but hold you fast, they will examine you again; I shall-----

Lord C. J. This is subsequent to the Fact, and is not Evidence against *Coke*. If you *Woodburne* have done, then Mr. *Coke*, what have you to say for your self?

Coke. May it please your Lordship, I am much ashamed, and very unable to defend my self; I am ashamed to think I should be concern'd in so heinous a Crime against Mr. *Crispe's* Life; I am even confounded at it; it is indeed a very great Crime, and I know not what to say for my self. As for *Woodburne*, he hath asserted against me several things that are false.

Lord C. J. I have told the Jury, that what he hath said is no Evidence against you.

Coke. When I first spoke of this Matter to *Woodburne*, he said, he should value it no more than the cutting off the Head of a Dog. I did, indeed, go out with Mr. *Crispe* that Night, but I was not near him when *Woodburne* struck him, but retreated to my own House in a Moment. My Lord, I am very sensible that a Point of Law may arise on the Statute whereon I am indicted.

Lord C. J. Whereon?

Coke. With respect to my Intention.

Lord

Lord C. J. Your Intention is Matter of Fact, and must be try'd by the Jury, whether your Intent was to maim and disfigure; this doth not seem to me to be a Point of Law; if there be any Point of Law that shall arise, you shall have Counsel to speak to it; but whether you slit *Mr. Crispe's* Nose, with an Intention to disfigure him, is a Matter of Fact,

Coke. My Intent was to kill *Mr. Crispe*, and not to maim or disfigure him.

Lord C. J. But that is the Question the Jury are to try, Whether you did not of Malice slit his Nose, with an Intent to disfigure him. If the Jury do not find that you so did, you must be acquitted on this Indictment. Supposing your Design was to kill, yet your Design might be likewise to maim; and this the Jury must try; this is Matter of Fact for their Consideration.

Coke. This is a very penal Statute, and I am unable to plead my own Cause; I beg your Lordship to assign me Counsel.

Lord C. J. If any Point of Law doth arise upon the Statute, you shall have Counsel; but as yet there is nothing but Matter of Fact; whether the Fact proved doth support the Charge in the Indictment; or in other Words, Whether the Evidence be sufficient to make good the Charge; this must be left to the Jury; I will state the Fact to 'em, and they are on their Oaths to give in their Verdict.

Coke. This is a very penal Statute, and I cannot argue it for my self; I hope your Lordship will assign me Counsel; this is the first Indictment That ever was upon this Statute.

L. C. J. What do the King's Counsel say to it?

Serj. Selby. After so full an Answer as your Lordship has given I think it but vain to say any thing; I always thought that no Matter of Law could arise upon this Fact and Indictment; for *Woodburne* did the Fact of Malice fore-thought, by lying in wait, and with an Intention to maim; *Mr. Coke* was aiding, abetting, and privy to the Fact: therefore, tho' it was an Intent to kill, it must be to maim also; he could not intend to kill him with such an Instrument, without intending to maim him first; and therefore, if there were two Intentions and but one executed, there is no Pretence to say, that what was executed was not intended. *Mr. Coke* says, there never was any Indictment before upon this Statute; if not, it must be because no Man before ever thought of being guilty of so horrid an Action.

L. C. J. If any Point in Law doth arise, you shall have Counsel; but the Fact must be agreed and stated, before the Law can come in debate. You say, your Intent was only to murder; but that is not yet agreed or found to be the Fact; it is the point now in Trial, whether you did it not with an Intention to maim, or disfigure; and according as that Intention shall appear to the Jury, so will they either acquit or convict you; therefore, if you have any thing more to say, I desire you to go on.

Coke. I submit to your Lordship's Judgment.

L. C. J. Gentlemen of the Jury, this is an Indictment of the Prisoners at the Bar *John Woodburne* and *Arundel Coke*, for Felony, by lying in wait, and purposely and maliciously slitting the Nose of *Edward Crispe*, with Intention, in so doing, to maim or disfigure the said *Edward Crispe*. *John Woodburne* is indicted for the principal Actor, or the Person who did the Fact; and *Arundel Coke* is indicted for being present, aiding, and abetting.

betting. This Indictment is founded on a Statute made in the two and twentieth Year of King *Charles* the second, intitled, *an Act to prevent malicious maiming and wounding*; whereby it is enacted, That if any Person or Persons, from and after the twenty fourth Day of *June*, in the Year of our Lord 1671, on purpose, and of Malice fore thought, and by lying in wait, should unlawfully cut out, or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose, or Lip, or disable any Limb or Member of any Subject of his Majesty, with Intention in so doing to maim or disfigure in any the Manners before-mentioned such his Majesty's Subject, that then, and in every such Case, the Person or Persons so offending, their Counsellors, Aiders, and Abettors (knowing of, and privy to the Offence, as aforesaid) shall be, and are thereby declared to be Felons, and shall suffer as in Cases of Felony, without Benefit of the Clergy. Now the Question on this Indictment is, Whether *John Woodburne* did on Purpose, and of Malice fore thought, and by lying in wait, unlawfully slit the Nose of *Edward Crispe*, with an Intention to maim or disfigure him therein? And, Whether *Arundel Coke* was feloniously present at the Fact, aiding and abetting *Woodburne* in the Commission and Perpetration of it? To make out this Matter several Witnesses have been called; the first Witness was *Edward Crispe* himself, who informs you, that *Arundel Coke* married his Sister, and Mr. *Brown Coke's* Sister; and that last New-years-day they were invited to sup at Mr. *Coke's*; and that before Supper, Mr. *Coke* propos'd to go to Mrs. *Monke's*; and that after Supper, about Ten-a-clock at Night, Mr. *Coke* call'd Mr. *Crispe* out of the Parlour to go to this Mrs. *Monke's*; and that when they had walked three or four Turns before the House where Mrs. *Monke* dwelt, *Coke* stood still and made a Noise like a hollowing, which made Mr. *Crispe* afraid, being dark, so he made toward the Wall; but in a quarter of a Minute's time, a Man came and knock'd him down: who that Man was, nor what was then further done to him, he could not then tell; because, by the Blow he lost his Senses for some time; but afterwards he got up again, and return'd to Mr. *Coke's* House, from whence he came; but in a sad Condition, much wounded and bloody; where Mr. *Sturgeon* the Chyrurgeon came to him, from whom you have the Particulars of his Case. He says, That *Coke* was close by him when he was knock'd down; but did not hear *Coke* say any thing. He also says, That upon his Death, One Hundred Pounds *per Annum* would have gone to *Coke's* Wife, as one of his Sisters and Co-heir.

The next Witness is Mr. *Brown*, who married *Coke's* Sister; and he says, That he, his Wife, and Daughter, were invited to sup at Mr. *Coke's* the Evening of New-Years-Day; that he came about Six-a-clock, and found Mr. *Coke* and Mr. *Crispe* drinking a Glass of Wine in the Parlour before Supper; that he sat down and drank with them till Supper; that after Supper, they Three came into the Parlour again, and sometime after *Coke* went out of the Room, and then came back again, and call'd Mr. *Crispe* out of the Room, who followed him; that *Coke* returned again in about Ten Minutes, and seem'd to be out of Breath, as if he had been walking faster than ordinary; that *Coke's* House is distant from the Churchyard about twice the Length of the Shire-House; that *Coke*, after he came in, drunk a Glass of Wine; and that *Brown* ask'd *Coke*, what was become of Mr. *Crispe*? And that *Coke* said, he believ'd he was

gone

gone home in the Dark ; and that in about two or three Minutes after, Mr. *Crispe* came in much wounded and bloody ; and that it was about half an Hour between the time of Mr. *Crispe*'s going out and returning again.

Mr. *Sturgeon*, the Chyrurgeon, swears, that being sent for, he came to Mr. *Crispe* about eleven-a-clock that Night ; that he had lost a great deal of Blood, and was very much wounded ; and that in the whole he had received Seven distinct Wounds, which he apprehends were by so many several Blows. He hath given you a particular Description of the several Wounds ; the second Wound is that which is alledged to be within this Statute ; he tells you, That this Wound divided the Right side of the Nostril ; and that tho' the Edge of the Nose was not cut through, yet it was cut through in another place ; the Nose was slit ; there was a Cut from without into the Nostril ; indeed the Slit was not very great, for he sew'd it up with one Stitch ; but he is sure, that a Slit there was, and you have seen Mr. *Crispe*'s Nose. Now the slitting of the Nose is one of the particular Facts mention'd in the Statute.

Mr. *Willet*, the Constable, swears, That he was with *Woodburne* after his Commitment, and that he told him, he was concern'd in the wounding Mr. *Crispe* ; that he had been there waiting for that purpose ; and that when *Coke* whistled to him, he went up and made the Assault upon Mr. *Crispe* with an Hook or Bill, that was new-ground for that purpose, and directed him where to find it at his House, which he accordingly did, and brought it to *Woodburne*, who said that was the Hook, and the Hook hath been now produced before you, and you have seen it.

The next Witness is Mr. *Wetherell*, the Goaler, who swears, that the Day after *Coke* was committed to his Custody, *Coke* sent for him up into his Chamber, and told him, That he and *Woodburne* had had a Design to murder Mr. *Crispe*, and had attempted it several times, and desir'd him to go and secure *Woodburne*, which he accordingly did. He hath given you an Account how and in what Manner he secur'd him ; and he swears moreover, that *Coke* told him several times, that he had a Design to murder *Crispe*, and that he employ'd *Woodburne*, and deliver'd *Crispe* into his Hands ; that *Woodburne* did it with an Hook ; and that he bad *Woodburne* to cut his Windpipe ; and that if *Woodburne* had not been a Cow-hearted Dog, he would have so done, and secur'd *Crispe* from telling Tales. *Wetherell* likewise swears, that *Coke* told him, That he call'd *Crispe* out of his House, went into the Church-yard with him, and there delivered him into *Woodburne*'s Hands ; and he farther swears, as to *Woodburne*, That *Woodburne* own'd, that he and *Coke* had lain in wait several Times, and at several Places, to murder Mr. *Crispe* ; and as to this particular Fact, he gave him this Account, That he struck him a Blow with his Hook, and that not quite striking him down, he gave him a second Blow ; and that as *Crispe* was falling, he cried out, God damn him, and that then it griev'd him to kill a Man with an Oath in his Mouth.

Robert *Moone* swears, That when he heard what was befallen Mr. *Crispe*, he said, that he knew the Person who did the Fact, or him who employ'd the Person ; and the Reason was, because about three Years and a Half before, Mr. *Coke* sent for him, and told him, That he wish'd

Mr. *Crispe* out of the World, and that some body would knock him in the Head ; and that when he ask'd him what Advantage that would be to him ? He replied, A very good Estate ; and afterwards told him, he did not value Ten or Twenty Guineas to knock him in the Head : This made *Moone* reflect upon himself, and was concerned that he should have such an Opinion of him, and thereon told him, That he would not kill the greatest Villain in the World for Ten such Towns as *Bury*.

John Carter swears, That on *Friday* before New-years-day last, *Coke* sent *Woodburne* to him, to tell him that his Master *Coke* wanted to speak with him ; that thereon he went to his House, and was ordered to come up to him in his Chamber, which he did, and there *Coke* first enquired, Whether he could help him to a good strong Horse ? And then told him, that he heard he had lost much of his Business ; he had no Iron, nor Coal ; and that he had a thing in agitation that would make a Man of him as long as he lived ; and thereon ask'd him, whether he could keep a Secret, and one of the biggest Secrets in the World ? and upon his telling him that he could, he ask'd him whether he could cut five or six Mens Heads off without Scruple of Conscience ? And when he told him that that was too much for a Man's Conscience to bear, he told him, there were those above, meaning the *South-Sea* Gentlemen, who had done ten times worse, ruin'd Families, and beggar'd Gentlemen ; and that to cut Mens Heads off was but a Trifle to them. That hereon *Carter* told him, He believ'd he spoke only in *Joak*, and by way of Merriment ; but *Coke* ask'd him, Whether he thought he sent for him only by way of *Joak* ? And then ask'd him, Whether he could cut off one Man's Head without Scruple of Conscience ? And when *Carter* told him, No ; then *Coke* told him, If he could not cut off a Man's Head, and lay it down on the Table before him, he was not for his Turn ; and then gave him a Glass of Brandy, and bid him consider of it for a Day or two ; and if he could cut off a Man's Head without Scruple of Conscience, he should have Plenty of Gold and Silver, and any thing else he should ask : Whereto *Carter* replying, That he needed no Consideration, he could not do it ; then he bid him send *Woodburne* to him, which he did.

In all this Discourse between *Carter* and *Coke*, I do not find that *Crispe* was the Person named on whom this Outrage should be committed ; but *Carter* who is a Tenant of a House of Mr. *Crispe's*, says, That *Coke* told him, he heard the House was out of repair ; that it would be his after Mr. *Crispe* ; and ask'd him, Whether he would not like it better for *Coke* to keep it in repair, as he had done before, whilst he was *Crispe's* Steward ?

This is the Substance of the Evidence given against the Prisoners at the Bar, to prove that they maliciously, and by lying in wait, have slit Mr. *Crispe's* Nose, with an Intent to disfigure him therein.

Woodburne doth not deny the general Fact, that is, the design'd lying in wait to assault Mr. *Crispe*, nor the cutting or knocking him down with his Hook ; his Confession is not Evidence against *Coke*, but it is against himself ; and you hear what he hath own'd ; that last Barley-Harvest *Coke* sent for him to mend his Copper, and then order'd him to meet him at another Place, which was accordingly done ; where *Coke* told him, That he had a thing for him to do, but it was not to be done presently ;

presently; and if he would do it, he should want for nothing. And when he ask'd him, What it was? He said, To let *Crispe* aside, that is, to kill him; and *Coke* gave him Eighteen Pence. That then he told him, He could not do it; that *Coke* solicited him several time afterwards to murder *Crispe*; the Particulars whereof I do not enumerate, because they principally relate to *Coke*, against whom it is not Evidence; but yet they so far relate to *Woodburne*, as to shew his Knowledge and Deliberation in this Matter; therefore to come to the Day whereon this Fact was done, *Woodburne* saith, That about Eight or Nine in the Morning, *Coke* sent for him, and told him, That that Day they should have the fairest Opportunity to kill Mr. *Crispe*; and it was agreed between them, that *Woodburne* should be in the Church-yard, at Mr. *Morrice*'s Porch, about Eight-a-clock in the Evening. He accordingly went with his Hedge-Hook or Bill, which hath been here produced. *Coke* came out to him twice by himself, and the third time, a little after Ten-a-clock, *Coke* and *Crispe* came out together; and then *Coke* whistled, which was the Signal between them, and thereon *Woodburne* came up, and owns, that with his Hook he cut and knock'd down *Crispe*, and that tho' he never heard *Crispe* swear before, yet that now, as *Crispe* was falling, he swore God damn him; whereon he gave him those several other Wounds and Blows that *Crispe* received; and then reflecting on what he had done, immediately went to his own House, where he was about to take a Rope to hang himself.

By this Defence of *Woodburne*, you see that he doth not deny the assaulting and wounding of Mr. *Crispe*; but that that he chiefly insists on is, that what he did was by the Solicitation and Procurement of Mr. *Coke*; which is no Justification or Excuse. However, he hath call'd two Witnesses, *Ann*, and *Sarah Woodburne*, his two Daughters, to prove that *Coke* did frequently send for their Father, and often came to him at his own House, and would be in private Conference together, which probably was about this Matter; but if it were, this only confirms what *Woodburne* insists on, That he was solicited, and hired by *Coke* to do this Fact; which, as I said, will neither justify nor excuse him; for no Man is to obey the unlawful Commands, or hearken to the illegal Advices of any other Person whatsoever.

As for Mr. *Coke*, that which he principally puts his Defence upon, is, that his Intent was to kill and murther Mr. *Crispe*, but not to maim him, or to slit his Nose, or to disfigure him in so doing; and therefore, tho' in Pursuance and Execution of the Attempt to murther Mr. *Crispe*, they slit his Nose, or might thereby disfigure him, yet that not being their Intention, and Design, he is to be acquitted on this Indictment, wherein the Intent of the Party is one of the principal Ingredients to make him guilty. This same Defence will serve also for *Woodburne*, that they intended to murther, but not to maim; and if they did maim, it was with an Intention to kill, and not to disfigure. Now this Indictment is, as I told you, founded on the 22d and 23d *Car. II. c. 1.* for that on purpose, of Malice fore-thought, and by lying in wait, the Prisoners did unlawfully and feloniously slit the Nose of *Edward Crispe*, with Intention in so doing to maim or disfigure him. *Woodburne* is charged as the Actor or principal Agent, *Coke* as being present, aiding, and abetting; which, in Point of Law, is the same, as to the Guilt, and Consequence, both being in Law Principals. That

That this Attempt on Mr. *Crispe* was design'd, malicious, and by lying in wait, the Evidence is very strong; there hath been also very strong Evidence given, that the Nose of Mr. *Crispe* was slit by *Woodburne*, and that *Coke* was present on the same Design with *Woodburne*.

But the thing chiefly insisted on is, that the slitting of Mr. *Crispe's* Nose was not with an Intention in so doing to maim or disfigure him; and if it were not with that Intent, then the Prisoners will be not guilty upon this Indictment.

Now Gentlemen, What the Intent of these Persons was in slitting Mr. *Crispe's* Nose, you are to try; this is a matter of Fact for your Consideration and Determination: It is the same in other Felonys, where the Intent of the Party makes the Crime. Burglary, is breaking open an House in the Night-time, with an Intent to commit a Felony; tho' no Felony be committed, yet if there was an Intent to do it, it is Burglary; which Intent is to be tried by the Jury. Larceny, or Theft, is taking away another Man's Goods, with an Intent to steal; if it were without such an Intent, it would only be a Trespass, and no Larceny; but whether it were or were not with such an Intent, is a Matter of Fact to be enquired into and determin'd by the Jury. Nay, the Intent is so necessary in all Felonies, that a Person who hath no Intent or Design, as a Madman, Lunatick, Infant, &c. cannot commit Felony for that very Reason; because he cannot have any Intent or Design in his Actions. So that in this Case you are to try no other Matter than what is tried in other Felonies, *viz.* The Intent of the Party.

Now how is the Intent of the Party discovered in other Cases? By the Facts themselves, by the precedent, concomitant, and subsequent Circumstances of the Facts, by the Manner of doing, and the like.

There are some Cases where an unlawful or felonious Intent to do one Act, may be carried over to another Act, done in Prosecution thereof; and such other Act will be Felony, because done in Prosecution of an unlawful or felonious Intent: As, if a Man shoots at a wild Fowl, wherein no Man hath any Property, and by such shooting happens unawares to kill a Man; this Homicide is not Felony, but only a Misadventure or Chance-Medly, because it was an Accident that hapned in the doing of a lawful Act: But if this Man had shot at a tame Fowl, wherein another had Property, but not with Intention to steal it, and by such shooting had accidentally kill'd a Man, he would then have been guilty of Manslaughter, because done in Prosecution of an unlawful Action, *viz.* committing a Trespass on another's Property: But if he had had an Intention of stealing this tame Fowl, then such accidental killing of a Man would have been Murder, because done in prosecution of a felonious Intent, *viz.* an Intent to steal. So a Man of Malice intends to burn one House, in Execution thereof he happens to burn another House; this is a malicious and felonious burning of this other House, because it sprung out of a malicious and felonious Intent. The like may be instanced where Poyson is intended to be given to one Person, and another takes and eats it, and thereby dies. And other Cases there are of the like Nature, where Acts done in Prosecution of felonious Intents, participate of the Nature of their Original, from whence they spring.

But now the Indictment on this Statute, is for a certain particular Intent; for purposely, maliciously, and by lying in wait, slitting Mr. *Crispe's* Nose, with an Intention in so doing, to maim or disfigure: And you are to consider, whether the Ingredients necessary to make this a Felony within the Statute, have been proved to your Satisfaction. The Facts necessary to be proved on this Indictment are, That on Purpose, and of Malice forethought, and by lying in wait, they unlawfully slit the Nose of Mr. *Crispe*, with Intention, in so doing, to maim or disfigure. As to the Fact of slitting the Nose, that is directly and positively sworn: There can be no doubt but that it was an unlawful slitting. Then the next thing for your Consideration will be, whether this unlawful, slitting was on Purpose, of Malice forethought, and by lying in wait. As to this, a great deal of Evidence hath been given; and what pass'd before, and at the Time of the Fact, will guide you herein. And if on a Review of the Evidence, you shall be of Opinion, that this unlawful slitting of the Nose was on Purpose, of Malice forethought, and by lying in wait; then the next Question will be, Whether this was with an Intention to disfigure? Facts do in some measure explain themselves; and the Circumstances preceding and accompanying those Facts, and the Manner of doing them, do many times more fully explain and declare the Intent of the Party. The Prisoner, Mr. *Coke*, which Defence goes both to him and *Woodburne*, insists, That their Intention was to murder, and not to maim; and that if they did maim or slit the Nose, it was with an Intention to kill, and not with an Intention to maim or disfigure. On the other Side, it is insisted on by the King's Counsel, That tho' the ultimate Intention might be to murder, yet there might be also an Intention to maim and disfigure; and tho' the one did not take effect, yet the other might: An Intention to kill, doth not exclude an Intention to maim and disfigure. The Instrument made use of in this Attempt was a Bill or Hedge-hock, which in its own Nature is proper for cutting and maiming; and where it doth cut or maim, doth necessarily, and by Consequence disfigure. The Attempt intended on Mr. *Crispe* was immediately to his Person, to do him a personal Injury. Besides, the Manner of doing and perpetrating this Fact is proper to be considered; That it was done by Violence, and in the dark, where the Assailant could not well make any Distinction of Blows; but knock'd and cut on any Part of Mr. *Crispe's* Body where he could, till he had sunk him down, and done to him whatever else he pleas'd. And if the Intention was to murder, you are to consider, whether the Means made use of, in order to effect and accomplish that Murder, and the Consequences of those Means, were not in the Intention and Design of the Party; and whether every Blow and Cut, and the Consequences thereof, were not intended, as well as the End for which it is alledg'd those Blows and Cuts were given.

All these several things, which I have mentioned, are proper for your Consideration: You will add to them your own Observations; and if, upon the whole, you are satisfied from the Evidence, that *Woodburne* did on purpose, and of Malice forethought, and by lying in wait, unlawfully slit the Nose of *Edward Crispe*, with Intention, in so doing, to maim or disfigure; and that *Arundel Coke* was feloniously present at the Commission of this Fact, and aiding and abetting therein; then you

will find them Guilty: But if this hath not been prov'd to your Satisfaction, then you are to acquit them, and find them Not Guilty.

Then the Jury withdrew to consider of their Verdict, and in about half an Hour returned again.

Cl. of the Arr. Gentlemen, Answer to your Names.
Here, and so the rest.

Cl. of the Arr. Gentlemen, Are you all agreed of your Verdict?
Jury. Yes.

Cl. of the Arr. Who shall say for you?
Jury. Our Foreman.

Cl. of the Arr. John Woodburne, Hold up thy Hand (*which he did.*)
Look upon the Prisoner. How say you, Is John Woodburne Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?
Foreman. None to our Knowledge.

Cl. of Arr. Arundel Coke, alias Cooke, Hold up thy Hand, (*which he did.*) How say you? Is Arundel Coke, alias Cooke, Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?
Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You say, that John Woodburne is Guilty of the Felony whereof he stands indicted: You say, that Arundel Coke, alias Cooke, is Guilty of the Felony whereof he stands indicted; and that neither they, nor either of them, had any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time since, to your Knowledge. And so you say all.

Jury. Yes.

Mr. Coke. I desire to know of your Lordship, whether the Nose can be said to be slit within the Meaning of this Statute, when the Edge of it was not cut through?

Lord C. J. It is true, the Edge of the Nose was not slit, but the Cut was athwart the Nose; which Cut separated the Flesh of the Nose, and cut it quite through into the Nostril: This I take to be a Slitting of the Nose; and the Chirurgeon swore the Nose was slit.



On Wednesday the Fourteenth of March, John Woodburne, Arundel Coke, alias Cooke, and one Edward Shorter, who was Convicted of Burglary, were brought to the Bar, in order to receive their Sentence; and the Court proceeded thus.

Clerk of Arr. *John Woodburne, Hold up thy Hand (which he did)*

Thou hast been Indicted of Felony, on the Statute; for purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing, to maim or disfigure him. Thou hast been thereupon Arraigned, thou hast pleaded thereunto Not Guilty, and for thy Tryal, thou hast put thy self upon God and thy Country; which Country hath found thee Guilty; what hast thou to say for thy self, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

To which *Woodburne* said nothing.

Cl. of Arr. *Arundel Coke alias Cooke, Hold up thy Hand (which he did)*

Thou hast been Indicted of Felony, on the Statute; for being feloniously present, aiding and abetting *John Woodburne*, in purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing, to maim or disfigure him. Thou hast been thereupon Arraigned, thou hast pleaded thereunto Not Guilty, and for thy Tryal thou hast put thy self upon God and thy Country; which Country hath found thee Guilty; what hast thou to say for thy self, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

Mr. Coke. Tho' your Lordship did not think it proper Yesterday to assign me Counsel, yet I hope your Lordship will now give me leave to speak for my self; especially since I am the first unhappy Instance of an Indictment on this Statute; no Indictment, as far as it appears by the Law-Books, was ever yet founded on this Statute, and therefore ought to be very well weighed.

Lord C. J. Call the King's Counsel, that they may hear what is said.

Then the King's Counsel were sent for, and being come:

Lord C. J. Mr. Coke, you may now go on with what you have to offer.

Mr. Coke. My Lord, I was saying, that I am the first unhappy Instance of an Indictment on this Statute; no Indictment as far as appears by the Law-Books, was ever yet founded on this Statute, and therefore it ought to be very well weigh'd, especially in the first Instance

to which it appears to have been ever applied. It is a very penal Statute, and consequently by the known Rule of Law, not to be carried beyond the express Letter of it; consequently no Crime, of what Nature or Magnitude soever, can fall within the Purview of it, but such as is Identically the same in every Circumstance, with that describ'd by the Words of the Statute its self.

The Crime describ'd by the Statute, is the unlawful cutting out, or disabling the Tongue, putting out an Eye, slitting the Nose, cutting off a Nose or Lip, or disabling any Limb or Member; attended with these particular Circumstances :

First, On Purpose and of Malice forethought.

Secondly, By lying in wait.

Thirdly, With Intention in so doing, to maim or disfigure in any of the Manners before mentioned in the Statute.

These Circumstances must all concur to constitute that particular Crime described by the Statute; and where any of them are wanting, of what Magnitude soever the Offence may be, 'tis not the Offence which the Statute has specified.

If the first Circumstance be wanting, no Man can say that any Offence, tho' attended with the two other, can fall within the Statute; this is sufficiently plain of its self.

As to the second; *A* and *B*, of Malice forethought, appoint and meet to fight a Duel; *A* in the Rencounter, runs *B* into the Eye, and puts it out; no body has ever imagined this to be within the Statute, because the Circumstance of lying in wait is here wanting.

As to the third; suppose *A* lies in wait to rob *B*, *B* resists, and in the Scuffle is wounded; as the Statute describes, but gets off. This is a Case which very frequently happens, yet no one ever thought it to be within the Statute, nor was any one ever Indicted for this upon it: The only Reason of which must be, because the Intention was to rob, and not to maim and disfigure the Person.

In my Case, If it be taken upon the Evidence of Mr. *Crispe*, nothing more appears than the Assault it self: If my Confession be read, the lying in wait, and the Malice forethought, will be proved; but then it will be likewise proved, that I had no other Intention but to Kill, and had no other Part, but by giving Orders to *Woodburne* for that Purpose; and my Confession must be taken together.

Nor is it an Objection to say, that the Crime which is proved by the Evidence is much worse than that which is describ'd by the Statute; for if it is worse, then it cannot be the same. Even in Cases of Crimes by the Common Law, if upon an Indictment for a Crime of an inferior Nature, the Evidence proves the Fact attended with Circumstances which brings it within the Description of a Crime of a superior Nature; the Person Indicted must be acquitted. At Summer Assizes at *Dorchester*, Anno 1712. a Woman was Indicted before Mr. Justice *Eyre*, for the Murder of another Woman; upon this Evidence it appeared, that the Person murdered was her Mistress, which made the Crime Petty Treason. The Judge directed this Matter to be specially found, and upon Conference with all the Judges it was held, she ought to be acquitted upon this Indictment, as she accordingly was; and was afterwards Indicted for Petty Treason, and Convicted and Executed thereupon.

Where a new Offence has been created by Statute, or an old one made more penal, the utmost Strictness has always been us'd to comply with the Letter of the Statute, whatever Inconveniences might result from such a Restraint.

As for Example :

By the Statute of the 39 *Eliz.* cap. 15. Clergy is taken away from any Person or Persons, who shall be convicted of taking any Money, Goods, or Chattels out of any Dwelling-house, &c. in the Day time, to the Value of five Shillings. One *Evans* and one *Finch*, were indicted on this Statute. 1 *Croke*, 473. *Evans*, and *Finch*'s Case: The Case was thus upon the Evidence, That *Evans* by a Ladder climbed to the upper Window of one *Audley's* House, and took out thereof Forty Pounds; and that *Finch* stood upon the Ladder in View of *Evans*, and saw *Evans* in the Chamber, and was assisting and helping to the committing of the Robbery, and took Part of the Money; upon a special Verdict it was adjudged, that because *Finch* did not actually enter the Chamber, and take the Money; tho' what he did amounted to a taking by Construction of Law, and was such a taking as made him a Felon; yet the very Letter of all penal Statutes must be pursued, and therefore he, *id est*, *Finch*, had his Clergy, and *Evans* was hanged.

Numerous Cases might be put of this Kind of Nicety in the Construction of Penal Statutes.

To mention but one more: By the Statute of 1 *Edw.* 6. cap 12. Clergy is taken away from such Persons, as shall be convicted for the felonious stealing of Horses, Geldings or Mares: — So scrupulously did the Judges adhere to the Letter of this Law, that there was forced to be another Statute made, *viz.* 2 & 3 *Edw.* 6. cap. 33. To enact, That a Person convicted for feloniously stealing one Horse, should be ousted of his Clergy in the same Manner as if he had stole two.

Nor is it in this Case enough to say, the Jury are Judges of all this: For as the Evidence now appears, and is admitted, it is matter of Law, how far this Evidence thus admitted on all Hands, is sufficient to support this Indictment. If it were in a Civil Case, the Party might demur to the Evidence. But if he is not allowed that Liberty in criminal Cases, it is upon the common Notion, That the Judges are the Prisoner's Counsel; and are obliged to determine all the Matters in Law arising upon the Evidence; as much as if the Persons had demurred to that Evidence.

And as in this Case, the Prisoner admits the Evidence given to be true, and insists upon it, that it doth not support the Indictment; and therefore has a Right to have the Opinion of the Judges thereupon, as much as if the Evidence were stated at Length upon the Record (as it must be in the Case of a Demurrer to Evidence) and nothing ought to be left to the Jury, but under the Judges Directions as to Point of Law.

In all these Cases therefore, my Lord, it has been usual to allow the Fact to be specially found; which gives the Prisoner the Advantage he might have had by the Demurrer to the Evidence.

Serjeant *Selby*. My Lord, I do agree with the Prisoner at the Bar, that this is a very penal Statute, and that these Facts must be made out to bring his Case within the Letter of the Act, *viz.* An Intention or Purpose of Malice forethought, to maim or disfigure in such a Manner

ner as the Statute describes; a lying in wait for that Purpose, a maiming or disfiguring accordingly; and an abetting and being privy to these Facts: These are all Facts which the Jury only could determine, either by positive, presumptive, or circumstantial Evidence; for no Man's Thoughts or Intentions can be otherwise proved, than by his Actions. My Lord Chief Justice hath left the whole Evidence of these Facts to the Jury, who by their Verdict have found all these Facts as laid in the Indictment, against which no body can now open his Mouth: We apprehend therefore, that no Matter of Law hath arisen, and that what hath been insisted on by the Prisoner, is beside his Case, and needs no Answer.

Serjeant Branthwait. My Lord, the Jury have found him Guilty. I apprehend nothing can properly be alledged now by Mr. Coke, that is contrary to the Verdict: If there is any Fault in the Indictment, we are ready to answer any Objection he shall make against it. That he does not pretend to. What is now offered by him is against the Verdict, and contrary to what is found by the Jury. I beg your Lordship's Leave, to give an Answer to the Objections he is pleased to make against the Verdict, however improperly and out of Time made, for the Satisfaction of himself, and of the Persons here present. I agree, a penal Act shall not be construed by Equity, or carry'd further than the Words or Letter of the Act, as the Cases mentioned by him do prove; but affirm, that this present Case is within the Words and Meaning of the Act: For tho the ultimate Intent of Mr. Coke might be to murder Mr. Crisp, (as by him is alledged in Excuse of himself) all the Means made use of to effect that Intent were also on Purpose, and such Blows cou'd not be given by an Instrument, without an Intent to maim and disfigure. They were given by one lying in wait on Purpose; and the Fact and Manner of doing the same sufficiently prove, and are a certain and necessary Indication of the Intent. The Defendants might have an Intent to cut off, or slit the Nose; put out an Eye, or dismember; and an Intent also to kill and destroy: One Intent did take effect, the other not. The Defendants ought not to answer for what was not done, but ought to answer for what was done; which was the slitting of Mr. Crisp's Nose, on Purpose to maim and disfigure him, by one lying in wait: which is all that is required by the Act.

As to the Objection; That if *A* and *B* go together to fight a Duel, if *A* slit the Nose of *B*, this is not within the Act; the Reason is, because there is no lying in wait.

As to the Case of *A* lying in wait to rob *B*; I with great Submission do say, that if *A* lie in wait to rob *B*, and to effect that Purpose with the greater Ease, *A* on purpose dismembers *B*, or puts out his Eyes, or does any other Fact prohibited by the Act; tho' *A* be hindred from robbing *B*, he is within the Act of Parliament; for the Intent and Purpose to rob, will be no excuse to one that shall commit the Facts prohibited by the Act.

As to the Case of *Evans and Finch*, Cr. Car. 473. on 39 El. which takes away the Clergy from him that Enters and Steals: *Finch* was not within the Statute, and had his Clergy; for the express Words of the Statute take away the Clergy from him that enters the House, which *Finch* did not. As to the Indictment of a Servant for Murder, in

killing her Mistress; it is plain, that it is a Crime of a higher Degree than Murder, it is an Offence of another Species, it is Petty Treason and not Murder.

The same Answer may be given to the other Cases mentioned, where the Words of an Act of Parliament are express: No Case shall be construed within a Penal Act, but what is within the Words: But as to the present Case, the Jury have found every Fact that the Act of Parliament requires, That an unlawful Assault was made on Mr. *Crispe* by the Prisoners; that his Nose was slit on Purpose to maim and disfigure him, by lying in wait. And all these Facts were proved by plain, clear, and I believe convincing Evidence, to every Person that heard the Tryal. I am sure the Prisoners can't complain of any Hardship done them; the Prosecution was carried on for the sake of Justice, for the Safety of his Majesty's Subjects. This being the first Instance of a Crime so heinous, cruel, barbarous and inhuman, that has been committed since the making the Act of Parliament; it is hoped by this Prosecution, a second will never be committed; for which Reason, I pray your Lordship's Judgment for the King, against the Prisoners.

Mr. Raby. My Lord, I did expect at this time I should have heard, from this unhappy Gentleman, something in Arrest of Judgment; something to shew that this Indictment and Record, now before your Lordship in Judgment, had been insufficient, and such as your Lordship could not have proceeded upon to give Judgment against the Prisoners: But I don't perceive any thing has been objected to this Indictment or Record; and therefore since nothing appears, or is objected, they must be taken to be sufficient, and such as your Lordship ought by Law to give Judgment upon against the Prisoners now at the Bar.

But this Gentleman has been pleased to take notice of the Act of Parliament, on which this Prosecution is founded: He has also made some Mention of the Facts which have been given in Evidence against him; and cited some Cases (as I apprehend) to shew, that Penal Statutes, and Criminal Acts of Parliament, ought not in Construction to be carried beyond the Letter and Words of the Act. This which he has offer'd (as I take it) is now meant to shew (or at least that he apprehends) that from the Evidence given, it has not fully appear'd he is Guilty of the Offence with which he stands charged, within the strict Words and Meaning of this Act of Parliament: And for this End, he has been pleas'd to make some Observations from the Words of the Statute, what Things he apprehends to be necessary to bring him within the Compass of this Act, *viz.* That such Wound or Maiming, as is described by the Statute, ought to be,

1. On Purpose, and of Malice forethought.
2. By lying in wait.
3. With Intention to disfigure.

All these have been already admitted to him; and he will see every one of these Circumstances not only taken notice of by us, in our Observations upon the Evidence, but also more fully by your Lordship, before the Jury gave their Verdict.

But with what Intent this Fact was done, whether of Malice forethought, by lying in wait, and with Intent to disfigure, are Circumstances only to be collected from the Evidence and the Facts themselves, of which neither we nor the Court can determine, but can only be enquired

quired of, and determined by the Jury ; and therefore, tho' it wou'd be a full Answer to what is now objected, to say, That the Jury have consider'd of the Evidence, have determin'd upon it, and found you Guilty of the Indictment, with all those Circumstances which the Prisoner objects are necessary to bring the Offence within the Statute ; tho' this, I say, might be an Answer, yet for the Justice of this Proceeding, and to satisfy the Prisoner in his own Objections, and that they should not pass unanswered, your Lordship will permit me to take notice of the Cases cited, and also to recollect the Evidence, so far as the Prisoner has made it necessary to repeat it.

I confess, 'tis with Concern I mention it again ; for I would not do any thing which might add to the Weight of those Afflictions which this unhappy Gentleman is under, had not he himself made it necessary to take further notice of it.

As to the Cases cited, only Two of them which he mentions are cited to be adjudged ; that at *Dorchester* by Mr. Justice *Eyre*, That a Woman was indicted for Murther, and upon Evidence it appear'd to be a different Offence, *viz.* Petit Treason, for she had kill'd her Mistress ; and that thereupon Mr. Justice *Eyre* caused her to be indicted for Petit Treason, and she was convicted. Certainly, my Lord, that Judgment was right, and very just ; for when it appear'd upon Evidence, that she was Guilty of a distinct and different Offence than that of which she stood indicted, could any thing be more just, than to cause her to be indicted for that Offence, of which, upon the Nature of the Evidence, she appear'd to be Guilty ? The Second Case cited, of *Evans and Finch* (which is reported in *Cro. Car.*) is no more than this : *Evans* went up a Ladder, open'd a Chamber Window in the *Temple*, went in and robb'd the Chamber in the Day-time ; *Finch* held the Ladder, and stood at the Foot of it when *Evans* enter'd : *Evans* was hang'd, *Finch* had his Clergy, and was only burnt in the Hand ; and with great Reason : For the Statute, 39 *Eliz.* which takes away Clergy, takes the Clergy only from him that enters : And therefore to have taken the Clergy from *Finch* who did not enter, had been unjust and unreasonable. And as to what is mentioned of the Statute, 2 & 3 *Ed. 6. cap. 33.* made in Explanation of the Statute which took Clergy from him who stole Horses, and to take Clergy from him who stole only one Horse ; there is such an Act of Parliament ; but this Act and the Cases cited, only shew that Regard has alway been had, not to extend Penal Statutes beyond the Words of them. But before these Cases were mentioned, (and indeed had they never been cited) this Rule of Construction had been allowed to the Prisoner ; for all the Particulars now insisted on by the Prisoner were before taken notice of by the Court, as Circumstances necessary to make out the Offence against the Prisoner : Nor has one of those Circumstances pass'd without Observation ; but the Court did with great Justice before declare those Circumstances to be necessary Ingredients to prove this Offence. And as to the other Cases, they are to the same Purpose, and not cited as Cases adjudged ; and therefore I need not take further notice of them. But certainly no Inferences can be drawn from the Cases cited, or any the least Colour to say, those Cases prove that the Prisoner is not guilty of the Offence he stands charg'd with, and of which he is convicted.

I am sorry he has given this Occasion to mention again the Fact which has been proved, from whence it appears that the Jury have given an impartial and just Verdict.

It cannot be forgot, that this was consulted and premeditated for Three Years and more before it was put in Execution, and therefore it was certainly purpos'd and of Malice forethought: Also that it was by lying in wait. Certainly this unhappy Gentleman cannot have forgot the Signal he gave: And to what Purpose was that Signal, if none was in waiting to hear it? And that this was with an Intent to disfigure, must be submitted upon the Fact and the Evidence. A Man uses a Weapon fit to maim and to disfigure, he cuts another on the Face and does disfigure him; shall he afterwards be at Liberty to say, It was not his Intent so to do? How dangerous that would be, is obvious to every one: This Act would then be easily eluded, if it should be sufficient, if it should avail an Offender, who has maim'd and disfigur'd another, to say, Prove that I intended it: It would be easy then to be out of the Reach of this Act of Parliament; indeed if that prevailed, none would be within it, it would be an easy Repeal of this Law. 'Tis objected, his Intent was to kill: He that intends the End, certainly intends the Means, especially those Means which he uses; and the Means used were cutting Mr. *Crispe* on the Face, and disfiguring him; and the Weapon is such, that by cutting him on the Face with that Weapon, could less be intended or expected? And if the Intent does not appear from this Fact, sure it never can from any: The Intent of a Man's Mind cannot appear but from the Act which proceeds from his Mind.

'Tis said, this is the first Indictment on this Statute: I believe there have not been many; for this is an Offence so barbarous, that I must agree it is such as seldom happens, and that by the general Laws of our Country, there was not a Punishment provided equal to this Offence: For our Laws (as the Laws of most Nations also do) provide against Offences which most frequently happen: But this is an Attempt so barbarous, that it was scarce imagin'd any Man could be so base and wicked as to attempt any thing like it, until it happ'd in the Case of Sir *John Coventry*; and then such an Abhorrence was shewn by the Parliament, that this Law was made to punish it, and to prevent the like for the future: And as this is the like Offence, it ought in Justice to have the like Punishment.

I shall add no more, but pray your Lordship's Judgment.

Mr. *Lee*. My Lord, The Observations made at the Bar, being after a Verdict, and therefore out of Time, I shall not trouble your Lordship with a Repetition of the Facts that have been proved, further than the Prisoner has made it necessary for me to mention some Particulars, in order to make the Answers to what he hath insisted on the more clear and plain.

I believe it has been truly said by the Prisoner, that the present Prosecution is the first Instance of any Proceedings on this Statute, and I hope it will be the last; because it is to be hoped there never will be found any other Person so wicked, as to give Occasion for a Prosecution on this Statute.

I believe likewise, that the true Design of making this Statute, was to subject Persons to Death, who intended to maim only, where the maiming was in such Manner as is mentioned in the Statute; but I can't

can't think that it does from thence follow, that a Person, who intends to Murder, and only Maims, is not within this Statute; for though it should be taken that there was an Intention to Murder, yet from the Fact done, from the Manner of doing it, and from the Weapon made use of, it seems apparent, that the Prisoner intended to Maim; and the Jury have now found that he did so intend.

As to the Cases which the Prisoner has cited, I beg leave to consider each of them, and offer such Answers to them as now occur.

The first Case he has been pleas'd to cite, is thus put:

A and *B*, of Malice forethought, appoint and meet to fight a Duel; *A* in the Rencounter, runs *B* into the Eye, and puts it out: The Prisoner says, such a Case would not be within this Statute.

I agree it would not, because this Case has not the Circumstances which the Statute requires; for in the Case thus put, there is no lying in wait, which is a Circumstance required by the Statute.

It is said, that if *A* lies in wait to rob *B*, *B* resists, and in the Scuffle, is maim'd in the Manner describ'd by the Statute, that such maiming wou'd not be punishable by this Statute; but I don't observe any Case is cited to prove this Assertion: And I am, with submission to your Lordship, inclin'd to think, that if there are a lying in wait, with Malice forethought, with Intent to rob, and in Prosecuting this Intent the Robbers should assault and maim in the Manner describ'd by the Statute; that such maiming would be within this Statute.

It is said, That though the Intent to Murder makes the Offence worse than if the Intent had been only to Maim, yet such Intent proves it not to be the same Offence which is mentioned in the Statute: And if a Man be Indicted of an Offence of an inferior Nature, and upon the Evidence it appears, that he is guilty of an Offence of a superior Nature, the Person Indicted must be acquitted; and to prove this, a Case is cited, which is said to have been before Mr. Justice *Eyre* at *Dorchester* Assizes. The Case as put, is this: A Woman is Indicted for the Murder of another Woman, on the Evidence it appear'd, that the Person Murder'd was her Mistress, which made the Crime Petty Treason: This was found specially; and upon Conference with the Judges, they were of Opinion, that the Woman ought to be acquitted upon this Indictment.

Admitting this Case to have been adjudged, I apprehend it does not affect the present Case.

The Law has distinguished Crimes under different Denominations; and as Offences are rank'd under different Species, so the Indictment must be suited to that sort of Crime, whereof the Party is guilty; and therefore proving a Person guilty of a Fact, known in the Law by the Name of Petty Treason, does not prove him guilty of an Indictment for Murder; Murder being an Offence which the Law has distinguish'd from Petty Treason, and to which it has assign'd a different Punishment.

But in the present Case, that Offence which is charged in the Indictment is proved in every Circumstance, and the Facts proved, do constitute that Crime which is made Felony without Clergy by the Statute. The Statute requires lying in wait, it requires Malice forethought, it requires slitting the Nose, &c. with Intent to maim, &c. The Indictment charges these Facts, the Witnesses have prov'd these Facts to the Satisfaction of a Jury, who have found the Defendant guilty of the Charge as laid.

The

The Prisoner says farther, That this is a very Penal Statute, and that Penal Statutes are always taken with the utmost Strictness ; and to prove this, cites a Case adjudged on the Statute 39 *Eliz.* by which Statute, Clergy is taken away from any Person or Persons, who shall be convicted of taking away Money, &c. in any Dwelling-house, &c. in the Day-time, to the Value of Five Shillings : And to prove the same Matter, an Instance is likewise put of the Construction on the Statute, 1 *Eliz.* 6. cap. 12. which takes away Clergy from such Persons as shall be convict of feloniously stealing Horses, &c. The Case in the Statute 39 *Eliz.* is the Case of *Evans and Finch*, *Cro. Car.* 473. in which Case *Finch* had his Clergy, because he did not actually enter the Chamber, and take the Money. The Construction on *Ed.* 6. was, That Clergy was not taken away from a Person, who feloniously stole one Horse.

But I apprehend, neither of these Cases come up to the Case now before your Lordship. As to the Case of *Evans and Finch*, which was a Case upon the Statute 39 *Eliz.* By that Statute, a Person is ousted of Clergy, who takes away Money to the Value of Five Shillings in any Dwelling-house, &c. *Finch* did not enter into the House, for he only stood on the Ladder ; and therefore he was not within the Words of that Statute, which spoke only of Persons who took away Goods in an House, &c.

As to the Construction upon the Statute 1 *Ed.* 6. 'tis plain that the felonious stealing one Horse could not be within an Act of Parliament, which took away Clergy only from such Persons as feloniously stole Horses. The Reason therefore of these Cases was, That the Facts prov'd did not bring the Persons accus'd within the Words of the Statute.

But it is not so in the Case now before your Lordship ; for the Prisoner is found guilty of a Fact, which is within the Words of the Statute upon which he is indicted ; and every Circumstance required to make him guilty of the Felony mentioned in the Statute, has been very fully prov'd.

My Lord, I am very sensible that the Objections taken at the Bar being after Verdict, did not require these particular Answers ; but this being a Case wherein Life is concern'd, I hope the Impropriety will be excus'd.

Lord C. J. I do agree with the Prisoner, that this is a Penal Law, and not to be extended by Equity : That he that is guilty within this Statute, must be guilty of all the Circumstances within it ; and if any one of the Circumstances prescribed by the Statute be wanting, he is Not Guilty. And therefore in all those Cases put by you, if any one of the Circumstances prescribed by the Statute be wanting in any one of them, such Case is out of the Statute. But whether all the Circumstances required by the Statute did not concur in your Case, was a Matter of Fact, which the Jury, who are the proper Judges, have tried ; and on such Trial they have found them all to concur. You seem to argue upon a Supposition of this Fact to be otherwise than the Jury have found it. The Jury have found you Guilty of all the Circumstances within the Statute. There was no Matter of Law in this Case, but Matter of Fact ; Whether on Purpose, and of Malice forethought, and by lying in wait, the Nose of Mr. *Crispe* was not slit, with Intention,

tion, in so doing, to maim or disfigure ; and whether you were not feloniously present, aiding, and abetting. The Jury had the whole Evidence before them ; they considered of the whole Matter, of the Preparation and lying in wait to do the Fact, of the Fact it self, of the Means and Instrument made use of to do it, of the Manner of doing it, and of all the other Circumstances and Particulars relating to the Fact : And on the whole, after they had withdrawn, and consider'd amongst themselves for some time, they have found you Guilty within the Terms and Circumstances of the Statute ; so that tho' all the Cases put by you shou'd be very good Law, yet they do not any wise affect yours, because you are actually found Guilty of the Crime its self : Have you therefore any thing to say against the Indictment its self ?

Mr. Coke. No, my Lord ; I hope I have one Glimpse more from the King's most gracious Pardon, that was published in the *Gazette*.

Lord C. J. If you offer any Pardon by Act of Parliament, or under the Great Seal, I must take notice of it, and allow it to you ; but if you mean only a Promise of a Pardon in the *Gazette*, or other publick Advertisement, you must apply for that in another Place : this doth not belong to me.

Mr. Coke. I hope that I shall have the Benefit of the Pardon that was promised, and that His Majesty will be graciously pleased to grant it me.

Lord C. J. If you have a Right to it, you need not doubt but you will have it ; His Majesty is so just, that He will make good whatsoever he hath promised ; but for this, your Application must be immediately to His Majesty.

Mr. Coke. I beg of your Lordship, that you will give me Time, that I may not be hurried out of the World presently.

Lord C. J. I shall consider of it, and give you a convenient time.

Cl. of Arr. Cryer, make an O *Ter.*

Cryer. Our Sovereign Lord the King doth straitly charge and command all manner of Persons to keep Silence, whilst Judgment is giving upon the Prisoners convicted, upon Pain of Imprisonment.

Lord C. J. You that are the Prisoners at the Bar, you have been indicted and convicted of very great and heinous Offences ; I am very sorry that you have been the Occasion of bringing your selves to unfortunate Ends, and that there is this melancholy Necessity on me to pronounce the Sentence of Death upon you : But on fair Trials the Jury have found you guilty, and by the Law you have forfeited your Lives.

Mr. Coke. My Lord, I am ashame of my self ; I did not expect to appear at this Time in this Place, where I have appear'd in another manner.

Lord C. J. I am sure, *Mr. Coke*, you ought seriously to reflect on your past Life : You cannot but own that you have been a great Sinner ; you have had Malice in your Heart against this Gentleman above three Years.

Mr. Coke. Indeed, my Lord, I know nothing of it.

Lord C. J. Moon hath sworn, That Three Years, or Three Years and a half ago, you sent to him, and propos'd to him the knocking *Mr. Crispe* on the Head.

Mr. Coke. I do declare it, my Lord, as I shall answer it at the Great Day, I never spoke to *Moon* about any such thing.

Lord

L. C. J. Supposing what *Moon* hath said to be too much, yet the Crimes you own and cannot deny are exceeding heinous. You own that you invited your Brother to sup at your House, on purpose that you might have an opportunity of murdering him. This is such a Crime as shocks human Nature : The bare mentioning of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. You have need to humble your selves before Almighty God. Besides the Judgment of the Law, there is also his Judgment-Seat, before which you must likewise appear : There all things are naked and bare, without colour or disguise ; every Man must there appear, and receive according to the Truth of his Actions, as they were good or bad. How far it may please God to extend his Mercy to you, I know not ; he is infinite in Mercy as well as in every other Perfection : and this we are sure, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile your selves to him ; improve with Diligence the little time that may be allotted you ; send for proper Persons who may advise and assist you : For as to the Judgment of the Law which is to be now pronounced upon you all, it is this ;

That you, and each of you, go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hanged by the Neck till you be severally and respectively dead ; and the Lord have mercy upon your Souls.

Then the Keeper carried away the Prisoners to the Goal to be reserved till their Execution. And on Saturday the 31st of *March*, 1722, they were executed at *Bury St. Edmonds*.

F I N I S.

A COPY of the Indictment.

SUFFOLK ff. Dnus' Rex ver. Coke & Woodburne.

JUR' pro Dno' Rege super Sacrum' suum presentant qd' Johes' Woodburne
nuper de Burgo de Bury Sti' Edi' in Com. Suff. Lab. & Arundel Coke
alias Cooke nuper de Burgo præd. Arm. post vicesimum quartum diem Junii
Anno Dni' millimo' sexcentimo' septuagesimo, scilt. primo die Januar. Anno
regni Dni' Georgii nunc Regis Magn. Britan. &c. octavo, machinantes
quendam Edm' Crispe Gen. adtunc & adhuc existen. subdit. dicti Dni' Regis
nunc mahemare & deformare apud Burg. præd. in Com. præd. vi & ar-
mis, &c. in & super præd. Edm' Crispe in pace Dei, & dicti Dni' Regis
adtunc & ibm' existen. ex proposito, anglice on purpose, ac ex malitiis
suis precogitat. & per insidias, anglice by lying in wait, illicite & felo-
nice insult. fecer. Et qd' præd. Johes' Woodburne cum quadm' Secure, ang-
lice a Bill, valor, an. denar. qm' ipse idem Johes' in manu sua dextra
adtunc & ibm' habuit & tenuit, nasum prefat. Edm' Crispe ex proposito ac
ex malitia sua precogitat. & per insidias adtunc & ibid. illicite & felonice si-
dit, anglice did slit, cum intention. ad eund. Edm' Crispe ita faciendo
modo præd. mahemand. & deformand. Quodq; præd. Arundel tempore fe-
lon. præd. per prefat. Johem' Woodburne modo & forma præd. illicite
& felonice commiss. & perpetrat. scilt. eod. primo die Januar. Anno octavo
supradict. apud Burg. præd. in Com. præd. ex proposito ac ex malitia sua pre-
cogitat. & per insidias illicite & felonice fuit præsens, auxilians, & abet-
tans prefat. Johem' Woodburne ad felon. præd. in forma præd. felonice
committend. & perpetrando. Et sic Jur. præd. dicunt super Sacrum' suum
præd. qd' præd. Johes' Woodburne & Arundel, dicto primo die Januar. An-
no octavo supradict. apud Burg. præd. in Com. præd. vi & armis, &c. ex
proposito ac ex malitiis suis præcogitat. & per insidias felon. præd. in form.
præd. illicite & felonice commiser. & perpetraver. & uterque eor. commisit
& perpetravit contra Pacem ditt. Dni' Regis nunc Coron. & Dignitat. suas,
necnon contra form. Statut. in hujusmodi casu edit. & provis.



